

<input checked="checked" type="checkbox"/> FILED	<input type="checkbox"/> LODGED
<input type="checkbox"/> RECEIVED	<input type="checkbox"/> COPY
OCT 01 2008	
CLERK U S DISTRICT COURT DISTRICT OF ARIZONA	
BY <u>Z</u> DEPUTY	

1 DIANE J. HUMETEWA  
United States Attorney  
2 District of Arizona

3 ROBERT K. LU  
Assistant United States Attorney  
4 Two Renaissance Square  
40 North Central Avenue, Suite 1200  
5 Phoenix, AZ 85004-4408  
Telephone: (602) 514-7500  
6 Robert.Lu@usdoj.gov

7 Attorneys for the United States of America

8  
9 UNITED STATES DISTRICT COURT  
10 DISTRICT OF ARIZONA

11 United States of America, *ex rel.*, Sadek R.  
Ebeid, M.D.,

12 Plaintiff,

13 v.

14 Theresa A. Lungwitz, et al.,

15 Defendants.

CV-08-0544-PHX-SRB

**NOTICE OF THE UNITED STATES  
TO DECLINE INTERVENTION**

**[FILED UNDER SEAL]**

16  
17 Pursuant to the False Claims Act, 31 U.S.C. § 3730(b)(4)(B), the United States  
18 notifies the Court of its decision not to intervene in this action.

19 Although the United States declines to intervene, we respectfully refer the Court to 31  
20 U.S.C. § 3730(b)(1), which allows the relator to maintain the action in the name of the  
21 United States; providing, however, that the "action may be dismissed only if the court and the  
22 Attorney General give written consent to the dismissal and their reasons for consenting." *Id.*  
23 The United States Court of Appeals for the Ninth Circuit has held that, notwithstanding this  
24 language, the United States has the right to a hearing when it objects to a settlement or  
25 dismissal of the action. *U.S. ex rel. Green v. Northrop Corp.*, 59 F.3d 953, 959 (9th Cir.  
26 1995); *U.S. ex rel. Killingsworth v. Northrop Corp.*, 25 F.3d 715, 723-25 (9th Cir. 1994).  
27 Accordingly, the United States respectfully requests that, should either the relator or the  
28 defendant propose that this action be dismissed, settled, or otherwise discontinued, this Court

1 provide the United States with notice and an opportunity to be heard before ruling or granting  
2 its approval.

3 Furthermore, pursuant to 31 U.S.C. § 3730(c)(3), the United States requests that all  
4 pleadings filed in this action be served upon the United States; the United States also requests  
5 that orders issued by the Court be sent to the Government's counsel. The United States  
6 reserves its right to order any deposition transcripts and to intervene in this action, for good  
7 cause, at a later date. The United States also requests that it be served with all notices of  
8 appeal.

9 Finally, the Government requests that the relator's First Amended Complaint, this  
10 Notice, and the attached proposed Order be unsealed. The United States requests that all  
11 other papers on file in this action remain under seal because in discussing the content and  
12 extent of the United States' investigation, such papers are provided by law to the Court alone  
13 for the sole purpose of evaluating whether the seal and time for making an election to  
14 intervene should be extended.

15 A proposed order accompanies this notice.

16 DATED this 1 day of October, 2008.

17 DIANE J. HUMETEWA  
18 United States Attorney  
19 District of Arizona

20 ROBERT K. LU  
21 Assistant U.S. Attorney  
22  
23  
24  
25  
26  
27  
28